

1 Donald H. Nichols, MN State Bar No. 78918  
 2 (pro hac vice application forthcoming)  
 3 Paul J. Lukas, MN State Bar No. 22084X  
 4 (pro hac vice application forthcoming)  
 5 Matthew C. Helland, MN State Bar No. 346214  
 6 (pro hac vice application forthcoming)  
 7 NICHOLS KASTER & ANDERSON, PLLP  
 8 4600 IDS Center  
 9 80 S. 8<sup>th</sup> Street  
 Minneapolis, MN 55402

10 Bryan J. Schwartz, CA State Bar No. 209903  
 11 NICHOLS KASTER & ANDERSON, LLP  
 One Embarcadero Center, Ste. 720  
 San Francisco, CA 94111

12 Attorneys for Individual and Representative Plaintiffs

13 IN THE UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA

15 Philip Wong and Frederic Chaussy,  
 16 individually, on behalf of all others  
 similarly situated, and on behalf of the  
 17 general public,

18 Plaintiffs,

19 vs.

20 HSBC Mortgage Corporation (USA);  
 21 HSBC Bank USA, N.A.; HSBC Holdings,  
 Inc.; and DOES 1 through 50, inclusive,

22 Defendants.

E-filing  
**EDL**

**C**ase **07** **2446**  
 CLASS ACTION

**COMPLAINT FOR DAMAGES,  
 RESTITUTION AND INJUNCTIVE  
 RELIEF**

- (1) Violations of Fair Labor Standards Act, 29 U.S.C. Section 201, et seq.**
- (2) Overtime Violations (California Labor Code Sections 510, 1194 and 1198, and IWC Wage Order(s))**
- (3) Waiting Time Penalties (California Labor Code Sections 201-203)**
- (4) Failure to Provide Itemized Wage Statements (California Labor Code Section 226)**
- (5) Failure to Provide and/or Authorize Meal and Rest Periods (California Labor Code Section 512)**
- (6) Retaliation for Protected Activity (California Labor Code Section 98.6 and Fair Labor Standards Act, 29 U.S.C. Section 215(a)(3))**
- (7) Violation of California Business and Professions Code Sections 17200 et seq.**

**DEMAND FOR JURY TRIAL**

**PRELIMINARY STATEMENT**

1  
2       1. This is a collective and class action brought by Individual and Representative  
3 Plaintiffs Philip Wong and Frederic Chaussy (collectively “Plaintiffs”), on their own behalf and  
4 on behalf of the proposed class identified below. Plaintiffs and the putative class members were  
5 or are employed by Defendants: HSBC Mortgage Corporation (USA); HSBC Bank USA, N.A.;  
6 HSBC Holdings, Inc. ; and certain Doe Defendants, or their predecessors-in-interest. Plaintiffs  
7 and the putative class members were or are employed as “Retail Mortgage Lending Consultants”  
8 and “Senior Retail Mortgage Lending Consultants” (also known as “loan officers”), and other  
9 non-management mortgage sales employees, who were misclassified as exempt and therefore  
10 erroneously denied overtime, meal and rest period compensation as required by state and federal  
11 wage and hour laws. These employees are similarly situated under Federal Rule of Civil  
12 Procedure 23 (“Rule 23”) and the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

13       2. The Collective Class (FLSA) is made of all persons who are or have been  
14 employed by Defendants as “Retail Mortgage Lending Consultants” and “Senior Retail Mortgage  
15 Lending Consultants” (also known as “loan officers”), and other non-management mortgage sales  
16 employees, who were misclassified as exempt, and therefore erroneously denied overtime  
17 compensation as required by federal wage and hour laws, at any time within the United States  
18 within three years prior to this action’s filing date through the date of final disposition of this  
19 action (the “Collective Class Period”).

20       3. The Class (Rule 23) is made up of all persons who are or have been employed by  
21 Defendants as “Retail Mortgage Lending Consultants” and “Senior Retail Mortgage Lending  
22 Consultants” (also known as “loan officers”), and other non-management mortgage sales  
23 employees, who were misclassified as exempt, and therefore erroneously denied overtime, meal  
24 and rest period compensation as required by state wage and hour laws, within the State of  
25 California within the period four years prior to the filing date of this Complaint (“the California  
26 Class Period”).

1       4. During the Collective Class Period and the Class Period, Defendants failed to pay  
2 overtime, meal and rest period compensation to each member of the Class as required by state and  
3 federal law. Plaintiffs seek relief for the Class pursuant to the applicable provisions of the  
4 California Labor Code and applicable Wage Orders of the Industrial Welfare Commission  
5 ("IWC"). Plaintiffs also seek relief for the Collective Class under the Fair Labor Standards Act.  
6 All of the relief sought is to remedy the Defendants' failure to pay all wages and premiums due,  
7 pay appropriate overtime compensation, to provide and authorize meal and rest periods, to pay  
8 waiting time penalties, and maintain accurate time records, in addition to injunctive relief.  
9

10      5. This is also an individual case of retaliation under California Labor Code Section  
11 98.6 and the FLSA (29 U.S.C. §215(a)(3)) brought by Frederic Chaussy arising from his  
12 discharge after he complained of Defendants' wage payment and overtime practices, and after he  
13 filed a claim and complaint with California's Labor Commissioner, instituted a proceeding  
14 relating to rights under the jurisdiction of the Labor Commissioner, and testified in such  
15 proceeding.

#### THE PARTIES

16      6. Individual and representative Plaintiff Philip Wong resides in San Mateo County,  
17 California. He has been employed by Defendants from approximately December 2005 to present  
18 as a loan officer working in San Francisco, San Mateo, and Alameda Counties, California.  
19 Plaintiff brings his claims on behalf of himself and the Collective and California Classes.  
20

21      7. Individual and representative Plaintiff Frederic Chaussy resides in Contra Costa  
22 County, California. He was employed by Defendants from approximately April 2006 to April  
23 2007 as a Senior Retail Mortgage Lending Consultant working in San Francisco, Santa Clara, San  
24 Mateo, and Alameda Counties, California. Plaintiff brings his claims on behalf of himself and the  
25 Collective and California Classes.  
26

27      8. Upon information and belief, Defendant HSBC Mortgage Corporation (USA), is a  
28 corporation doing business in and maintaining branches in several states throughout the United

States, including facilities in San Francisco, Redwood City, Cupertino, Oakland, and Fremont, California.

9. Upon information and belief, Defendant HSBC Bank USA, N.A., is a corporation doing business in the United States, including business through its wholly-owned subsidiary HSBC Mortgage Corporation (USA), which operates facilities in San Francisco, Redwood City, Cupertino, Oakland, and Fremont, California.

10. Upon information and belief, Defendant HSBC Holdings, Inc. , is a corporation doing business in the United States, through its member entity, HSBC Bank USA, N.A., which operates, in part, through its wholly-owned subsidiary, HSBC Mortgage Corporation (USA), operating facilities in San Francisco, Redwood City, Cupertino, Oakland, and Fremont, California.

11. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages of Plaintiffs and the putative class members herein alleged were proximately caused by such Defendants.

12. Plaintiffs are informed, believe, and thereon allege that each of the Defendants herein was, at all times relevant to this action, an agent, employee, representing partner, integrated enterprise with, and/or joint venturer of the remaining Defendants and was acting within the course and scope of the relationship. Plaintiffs are further informed, believe, and thereon allege that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining Defendants.

#### **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 as this case is being brought under the FLSA, 29 U.S.C. § 207 *et seq.* Each representative Plaintiff has

signed a consent form to join this lawsuit, copies of which are attached as Exhibit A. This Court also has supplemental jurisdiction over the Plaintiffs' state law claims pursuant to 28 U.S.C. § 1337.

14. Venue is proper in the United States District Court, Northern District of California pursuant to 28 U.S.C. § 1391, because Defendants operates facilities in San Francisco, Redwood City, Cupertino, Oakland, and Fremont, California, and because a substantial part of the events giving rise to the claims occurred in this district.

15. Pursuant to Civil L.R. 3-2(c) and (d), this action is properly assigned to the Northern District of California because a substantial portion of the events giving rise to this dispute occurred in San Francisco, San Mateo, Santa Clara, and Alameda Counties, California.

## **COLLECTIVE ACTION ALLEGATIONS**

16. Plaintiffs bring this action on behalf of themselves and other similarly situated employees as authorized under FLSA § 16(b), 29 U.S.C. § 216(b). The employees similarly situated are:

**Collective Class:** All persons who are or have been employed by Defendants as “Retail Mortgage Lending Consultants” and “Senior Retail Mortgage Lending Consultants” (also known as “loan officers”), and other non-management mortgage sales employees, who were misclassified as exempt, and therefore erroneously denied overtime compensation as required by federal wage and hour laws, at any time within the United States within three years prior to this action’s filing date through the date of final disposition of this action

17. Upon information and belief, Defendants suffered and permitted Plaintiffs and the Collective Class to work more than forty hours per week without overtime compensation.

18. Defendants' unlawful conduct has been widespread, repeated and consistent.

19. Upon information and belief, Defendants knew that Plaintiffs and the Collective Class performed work that required overtime pay. Defendants have operated under a scheme to deprive these employees of overtime compensation by failing to properly compensate them for all

1 hours worked.

2 20. Defendants' conduct, as set forth in this Complaint, was willful and in bad faith,  
3 and has caused significant damages to Plaintiffs and the Collective Class.

4 21. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs  
5 and the Collective Class, and as such, notice should be sent to the Collective Class. There are  
6 numerous similarly situated current and former employees of Defendants who have been denied  
7 overtime pay in violation of the FLSA who would benefit from the issuance of a Court supervised  
8 notice of the present lawsuit and the opportunity to join in the present lawsuit. Those similarly  
9 situated employees are known to Defendants and are readily identifiable through Defendants'  
10 records.

12 **CLASS ACTION ALLEGATIONS**

14 22. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal  
15 Rules of Civil Procedure 23 on behalf of the following defined class:

16 **California Class:** All persons who are or have been employed by Defendants as "Retail  
17 Mortgage Lending Consultants" and "Senior Retail Mortgage Lending  
18 Consultants" (also known as "loan officers"), and other non-management  
19 mortgage sales employees, who were misclassified as exempt, and  
20 therefore erroneously denied overtime, and meal and rest period  
compensation, as required by state wage and hour laws, within the State of  
California within the period four years prior to the filing date of this  
Complaint.

21 23. Numerosity: The Proposed Class is so numerous that joinder of all members is  
22 impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the  
23 relevant time period, Defendants employed hundreds of people who satisfy the definition of the  
24 Proposed Class.

26 24. Typicality: The Plaintiffs' claims are typical of the members of the Proposed  
27 Class. Plaintiffs are informed and believe that, during the Class Period, like other "Retail  
28

1 Mortgage Lending Consultants" and "Senior Retail Mortgage Lending Consultants" (also known  
2 as "loan officers"), and other non-management mortgage sales employees who were misclassified  
3 as exempt, they routinely worked more than eight hours per day and more than 40 hours per  
4 week, and routinely worked through meal and rest periods. Plaintiffs had the same duties and  
5 responsibilities as other Class members. Plaintiffs were subject to Defendants' policy and  
6 practice of improperly treating and classifying employees in these positions as "exempt" from  
7 state wage and hour laws, failing to pay appropriate overtime compensation, failing to provide or  
8 authorize meal and rest breaks in compliance with state laws, and failing to maintain accurate  
9 time records of hours worked by the Proposed Class or to issue accurate itemized wage  
10 statements to these individuals.

11       25. Superiority: A class action is superior to other available methods for the fair and  
12 efficient adjudication of the controversy, particularly in the context of wage and hour litigation  
13 where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits  
14 in federal court against large corporate Defendants. Prosecuting hundreds of identical, individual  
15 lawsuits nationwide does not promote judicial efficiency or equity and consistency in judicial  
16 results.

17       26. Adequacy: Plaintiffs will fairly and adequately protect the interests of the  
18 Proposed Class, and they have retained counsel experienced in complex, nationwide wage and  
19 hour class and collective action litigation.

20       27. Commonality: Common questions of law and fact exist to all members of the  
21 Proposed Class and predominate over any questions solely affecting individual members of the  
22 Proposed Class, including but not limited to:

- 23           A. Whether Defendants improperly classified the members of the Proposed  
24           Class as exempt;  
25           B. Whether Defendants unlawfully failed to pay appropriate overtime  
26           compensation to members of the Proposed Class in violation of the state  
27           wage laws;

- 1 C. Whether Defendants employed Plaintiffs and the Proposed Class within the
- 2 meaning of the applicable state laws;
- 3 D. Whether Plaintiffs and the Proposed Class' members who are no longer
- 4 employed with Defendants are entitled to waiting time penalties pursuant to
- 5 the applicable state laws;
- 6 E. Whether Defendants' policies and practices provide and/or authorize meal
- 7 and rest periods in compliance with applicable state laws;
- 8 F. Whether Defendants failed to keep accurate time records for all hours
- 9 worked by the Plaintiffs and the Proposed Class in violation of state wage
- 10 laws;
- 11 G. Whether Defendants provided adequate itemized wage statements to the
- 12 Plaintiffs and the Class pursuant to state wage laws;
- 13 H. The proper measure of damages sustained by the Proposed Class; and
- 14 I. Whether Defendants' actions were "willful."

15 28. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because  
16 prosecution of actions by or against individual members of the class would result in inconsistent  
17 or varying adjudications and create the risk of incompatible standards of conduct for Defendants.  
18 Further, adjudication of each individual member's claim as a separate action would be dispositive  
19 of the interest of other individuals not party to this action, impeding their ability to protect their  
20 interests.

21 29. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because  
22 questions of law and fact common to the Proposed Class predominate over any questions  
23 affecting only individual members of the Proposed Class, and because a class action is superior to  
24 other available methods for the fair and efficient adjudication of this litigation. Defendants'  
25 common and uniform policies and practices denied the Proposed Class the overtime pay to which  
26 they are entitled. The damages suffered by the individual Proposed Class members are small  
27 compared to the expense and burden of individual prosecution of this litigation. In addition, class  
28

1 certification is superior because it will obviate the need for unduly duplicative litigation that  
2 might result in inconsistent judgments about Defendants' practices.

3 30. Plaintiffs intend to send notice to all members of the Proposed Class to the extent  
4 required by Rule 23. The names and address of the Proposed Class are available from  
5 Defendants.

6 **PLAINTIFF FREDERIC CHAUSSY INDIVIDUAL ALLEGATIONS**

7 31. On or about February 21, 2007, Plaintiff Frederic Chaussy filed a complaint  
8 and claim relating to wage violations committed by Defendants with the California Department of  
9 Labor Standards Enforcement (DLSE) (Case No. 07-60632 DK).

10 32. On February 23, 2007, Plaintiff Frederic Chaussy discussed the Defendant's  
11 wage violations and his DLSE complaint and claim with his supervisor, Amy S. Ku (Vice  
12 President and Senior Retail Lending Manager for Northern California), and, on February 26,  
13 2007, Mr. Chaussy and Defendants received notice from the DLSE that Mr. Chaussy's complaint  
14 was received and would be heard on April 10, 2007.

15 33. Since beginning employment with Defendants on April 3, 2006, Plaintiff  
16 Frederic Chaussy received no performance-related corrective action prior to discussing  
17 Defendant's overtime violations and filing his DLSE complaint and claim.

18 34. On March 5, 2007, when Plaintiff Frederic Chaussy met with Defendants'  
19 official, Jeff P. Needham (Senior Vice President Western Division), to discuss Mr. Chaussy's  
20 wage complaint, Mr. Needham admonished Mr. Chaussy for the first time regarding deficient  
21 productivity. Upon information and belief, Mr. Chaussy's productivity was comparable to that of  
22 his colleagues who were not admonished.

23 35. On March 7, 2007, for the first time, Plaintiff Frederic Chaussy received a  
24 written warning regarding his performance from Defendants, though, upon information and  
25

belief, Mr. Chaussy's performance was comparable to that of his colleagues who did not receive written warnings.

36. On April 4, 2007, Plaintiff Frederic Chaussy received a "Final Written Warning," though fewer than the 30 days required by Defendants' internal policies had elapsed since the prior warning, thereby discriminating against Mr. Chaussy in the terms/conditions of his employment.

37. On April 10, 2007, Plaintiff Frederic Chaussy testified in a DLSE hearing regarding his wage claim, along with Defendants' Vice President of Human Resources. Defendants acknowledged (a) wage violation(s) in the hearing.

38. On April 19, 2007, Plaintiff Frederic Chaussy was discharged, purportedly for “poor production/performance,” but in fact, in retaliation for Mr. Chaussy’s protected FLSA and DLSE activities.

40. The FLSA, 29 U.S.C. §215(a)(3), protects employees, like Plaintiff Frederic Chaussy, who protest about the failure to pay proper wages, including persons who have not actually filed a formal, Federal wage complaint.

41. California Labor Code Section 98.6 prohibits retaliation for engaging in protected DLSE activity.

42. Defendants violated the §215(a)(3) of the FLSA and California Labor Code Section 98.6, entitling Plaintiff Frederic Chaussy to such relief as the FLSA and Labor Code provide.

## **FIRST CLAIM FOR RELIEF**

**(Failure to Pay Overtime Compensation in Violation of the Fair Labor Standards Act)**

43. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

1           44. Plaintiffs consent in writing to be a part of this action, pursuant to 29 U.S.C. §  
2 216(b). Plaintiffs written consent forms are attached hereto. Plaintiffs anticipate that as this case  
3 proceeds, other individuals will sign consent forms and join as plaintiffs.

4           45. At all relevant times, Defendants has been, and continue to be, "employers"  
5 engaged in interstate commerce and/or in the production of goods for commerce, within the  
6 meaning of the FLSA, 20 U.S.C. § 203. At all relevant times, Defendants have employed and  
7 continue to employ employees, including Plaintiffs, and the Collective Class. At all relevant  
8 times, upon information and belief, each Defendant corporation has had gross operating revenues  
9 in excess of \$500,000.00.

10          46. The FLSA requires each covered employer such as Defendants to compensate all  
11 non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for  
12 work performed in excess of forty hours per work week.

13          47. During their employment with Defendants, within the applicable statute of  
14 limitations, Plaintiffs and the other Collective Class members worked in excess of forty hours per  
15 workweek without overtime compensation. Despite the hours worked by Plaintiffs and the  
16 Collective Class members, Defendants willfully, in bad faith, and in knowing violation of the  
17 Federal Fair Labor Standards Act, failed and refused to pay them overtime compensation.

18          48. By failing to accurately record, report, and/or preserve records of hours worked by  
19 Plaintiffs and the Collective Class, Defendants has failed to make, keep, and preserve records  
20 with respect to each of its employees sufficient to determine their wages, hours, and other  
21 conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

22          49. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,  
23 within the meaning of 29 U.S.C. § 255(a).

24          50. Plaintiffs, on behalf of themselves and the Collective Class, seek damages in the  
25 amount of their respective unpaid overtime compensation, liquidated damages from three years  
26 immediately preceding the filing of this action, plus interests and costs as allowed by law,

pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the Court deems just and proper.

51. Plaintiffs, on behalf of themselves and the Collective Class, seek recovery of their attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

## **SECOND CLAIM FOR RELIEF**

## **(Failure to Pay Overtime Compensation in Violation of California Law)**

52. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

53. At all relevant times herein, IWC Wage Order No. 4 (8 C.C.R. § 11040) and California Labor Code § 510 required an employer, such as Defendants, to pay overtime premium(s) for hours worked in excess of 8 in a given workday, 40 in a given workweek, or on the seventh day worked in a single workweek. Pursuant to California Labor Code § 1198, it is unlawful to employ persons for hours longer than the hours set by the Industrial Welfare Commission (“IWC”), or under conditions prohibited by the applicable wage orders of the IWC.

54. Plaintiffs are informed and believe, and thereon allege, that members of the Class worked in excess of eight hours per day and in excess of 40 hours per week, and Defendants unlawfully failed to pay members of the Class the overtime required in violation of IWC Wage Order 4 (8 C.C.R. § 11040, as amended during the Class Period), and the California Labor Code §§ 510 and 1198. Pursuant to California Labor Code § 1194, Plaintiffs and the other Class Members are entitled to recover their unpaid overtime compensation.

55. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs and the Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, plus interest, attorneys' fees and costs.

### **THIRD CLAIM FOR RELIEF**

### (Waiting Time Penalties)

56. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

57. During the relevant time period, many Class members were employed by and thereafter terminated by or resigned from their positions with Defendants. Defendants, however, willfully failed to pay such Class Members all wages owed them (including overtime wages) within the time limits set forth in California Labor Code sections 201 and 202.

58. Under Labor Code sections 201, 202, and 203, those Class Members who no longer work for Defendants are entitled to waiting time penalties for Defendants willful failure to timely pay all wages owed upon separation of their employment.

## **FOURTH CLAIM FOR RELIEF**

### **(Failure to Provide Accurate Itemized Wage Statements)**

59. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

60. California Labor Code § 226(a) provides that, at the time of each payment of wages, an employer shall provide each employee with a wage statement itemizing, among other things, the total hours worked by the employee in the pay period. California Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) may recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys fees and costs.

61. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements including, *inter alia*, hours worked, to Plaintiffs and the Class in accordance with Labor Code § 226(a). Such failure caused injury to Plaintiffs and the Class members, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Plaintiffs and the Class are therefore entitled to the damages and penalties provided for under Labor Code § 226(e). Pursuant to Labor

1 Code section 226(g), Plaintiffs and the Class are also entitled to and seek injunctive relief  
 2 requiring Defendants to comply with Labor Code 226(a).

3 **FIFTH CLAIM FOR RELIEF**

4 **(Failure to Provide Rest Breaks and Meal Periods)**

5 62. Plaintiffs allege and incorporate by reference the allegations in the proceeding  
 6 paragraphs.

7 63. California Labor Code section 512 prohibits an employer from employing an  
 8 employee for a work period of more than five hours per day without providing the employee with  
 9 a meal period of not less than 30 minutes, or for a work period of more than 10 hours per day  
 10 without providing the employee with a second meal period of not less than 30 minutes.

11 64. Section 11 of Wage Order No. 4 provides (and at all times relevant hereto  
 12 provided) in relevant part that:

13  
 14 No employer shall employ any person for a work period of more  
 15 than five (5) hours without a meal period of not less than 30  
 16 minutes, except that when a work period of not more than six (6)  
 17 hours will complete the day's work the meal period may be waived  
 18 by mutual consent of the employer and employee. Unless the  
 19 employee is relieved of all duty during a 30 minute meal period, the  
 20 meal period shall be considered an "on duty" meal period and  
 21 counted as time worked. An "on duty" meal period shall be  
 22 permitted only when the nature of the work prevents an employee  
 23 from being relieved of all duty and when by written agreement  
 24 between the parties an on-the-job paid meal period is agreed to. The  
 25 written agreement shall state that the employee may, in writing,  
 26 revoke the agreement at any time. If an employer fails to provide  
 27 an employee a meal period in accordance with the applicable  
 28 provisions of this Order, the employer shall pay the employee one  
 (1) hour of pay at the employee's regular rate of compensation for  
 each work day that the meal period is not provided.

24  
 25 65. Section 12 of Wage Order No. 4 provides (and at all times relevant hereto  
 26 provided) in relevant part that:

27  
 28 Every employer shall authorize and permit all employees to take  
 rest periods, which insofar as practicable shall be in the middle of

each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

66. California Labor Code section 226.7 prohibits any employer from requiring any employee to work during any meal or rest period mandated by an applicable IWC wage order, and provides that an employer that fails to provide an employee with a required rest break or meal period shall pay that employee one additional hour of pay at the employee's regular rate of compensation for each work day that the employer does not provide a compliant meal or rest period.

67. Defendants failed to provide Plaintiffs and Class Members with meal periods as required by law, and failed to authorize and permit Plaintiffs and Class Members to take rest periods as required by law. Plaintiffs and the Class Members are therefore entitled to payment of the meal and rest period premiums as provided by law.

#### **SIXTH CLAIM FOR RELIEF**

##### **(Unfair Practice under the Unfair Competition Act)**

68. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

69. Section 17200 of the California Business and Professions Code — California's Unfair Competition Law — prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or practices. The foregoing conduct by Defendants, as alleged, constitutes unlawful business actions and practices in violation of Section 17200, *et seq.*

70. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiffs and the Class Members are entitled to restitution of the overtime earnings and other unpaid wages and

1 premiums alleged herein that Defendants has improperly withheld and retained during a period  
2 that commences four years prior to the filing of this action, a permanent injunction requiring  
3 Defendants to pay minimum wage and overtime to all workers as defined herein, in California, an  
4 award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and other applicable  
5 law, and costs.

6 **SEVENTH CLAIM FOR RELIEF**

7 **(Retaliation for Engaging in Activity Protected by the Labor Commissioner)**

9 71. Plaintiffs allege and incorporate by reference the allegations in the preceding  
10 paragraphs.

11 72. California Labor Code Section 98.6 provides:

13 (a) No person shall discharge an employee or in any manner discriminate  
14 against any employee or applicant for employment because the employee or  
15 applicant ...instituted any proceeding under or relating to his or her rights, which  
16 are under the jurisdiction of the Labor Commissioner, or because the employee  
17 has initiated any action or notice pursuant to Section 2699, or has testified or is  
about to testify in any such proceeding or because of the exercise by the employee  
or applicant for employment on behalf of himself, herself, or others of any rights  
afforded him or her.

18 (b) Any employee who is discharged...or in any other manner  
19 discriminated against in the terms and conditions of his or her employment  
20 because the employee...has made a bona fide complaint or claim to the division  
21 pursuant to this part, or because the employee has initiated any action or notice  
22 pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for  
lost wages and work benefits caused by those acts of the employer....

23 73. Because Plaintiff Frederic Chaussy engaged in protected activity under  
24 California Labor Code Section 98.6, and was retaliated against, he is entitled to relief including,  
25 but not limited to rehiring or reinstatement, reimbursement of lost wages and benefits and interest  
26 thereon, payment of reasonable attorney's fees, and the posting of notices to employees.

## **EIGHTH CLAIM FOR RELIEF**

**(Retaliation for Engaging in Activity Protected by the Fair Labor Standards Act)**

74. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

75. The FLSA, 29 U.S.C. §215(a)(3), makes it unlawful:

to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify to in any such proceeding, or has served or is about to serve on an industry committee.

76. The FLSA's anti-retaliation provision encourages reports of illegal activity, protecting any employee who protests about the failure to pay overtime wages, including persons who have not filed a formal Federal complaint.

77. Because Plaintiff Frederic Chaussy complained of wage payment and overtime violations, and therefore, engaged in protected activity under the FLSA, and was retaliated against, he is entitled to relief including, but not limited to rehiring or reinstatement, reimbursement of lost wages and benefits and interest thereon, payment of reasonable attorney's fees, and the posting of notices to employees.

## **PRAYER FOR RELIEF**

78. WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Proposed Class, pray for relief as follows:

- A. That the Court determine that this action may proceed as a class action under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure;
  - B. That Defendants are found to have violated the overtime, meal/rest period, itemized wage statement/time records, and waiting time penalty provisions

1                   of the state wage laws cited above as to the California Class identified  
2                   above;

- 3                   C. That Defendants are found to have violated the overtime provisions of the  
4                   FLSA as to Plaintiffs and the Collective Class;
- 5                   D. That Defendants are found to have violated the FLSA by failing to  
6                   maintain accurate time records of all the hours worked by Plaintiffs and the  
7                   Class;
- 8                   E. That Defendants are found to have violated the FLSA and state laws by  
9                   retaliating against Frederic Chaussy for protected activities;
- 10                  F. That Defendants' violations as described above are found to be willful;
- 11                  G. An award to Plaintiffs and the Class for the amount of unpaid wages owed,  
12                   including interest thereon, and penalties subject to proof at trial;
- 13                  H. That Defendants be required to reinstate Plaintiff Frederic Chaussy with  
14                   full relief, including but not limited to backpay with interest, damages, and  
15                   attorney fees and costs;
- 16                  I. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and  
17                   the Classes due to Defendants' unlawful activities, pursuant to state laws  
18                   cited above;
- 19                  J. That Defendants further be enjoined to cease and desist from unlawful  
20                   activities in violation of state laws cited above;
- 21                  K. An award of reasonable attorneys' fees and costs pursuant to 29 U.S.C.  
22                   section 216 and/or other applicable state laws; and
- 23                  L. For such other and further relief, in law or equity, as this Court may deem  
24                   appropriate and just.

25                   **JURY DEMAND**

26                  79. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs,  
27                   individually and on behalf of all others similarly situated, demand a trial by jury.

1  
2 Dated: May 7, 2007  
3  
4

**NICHOLS KASTER & ANDERSON**

5 Donald H. Nichols, MN State Bar No. 78918  
6 (pro hac vice application forthcoming)  
7 Paul J. Lukas, MN State Bar No. 22084X  
8 (pro hac vice application forthcoming)  
9 Matthew C. Helland, MN State Bar No. 346214  
10 (pro hac vice application forthcoming)  
11 NICHOLS KASTER & ANDERSON, PLLP  
12 4600 IDS Center  
13 80 S. 8<sup>th</sup> Street  
14 Minneapolis, MN 55402

15 Bryan J. Schwartz, CA State Bar No. 209903  
16 NICHOLS KASTER & ANDERSON, LLP  
17 One Embarcadero Center  
18 Ste. 720  
19 San Francisco, CA 94111

20 Attorneys for Individual and Representative  
21 Plaintiffs  
22  
23  
24  
25  
26  
27  
28

1  
CONSENT FORM AND DECLARATION

2 I hereby consent to join the lawsuit against HSBC as a Plaintiff to assert claims against it  
3 for violations of the wage and hour laws of the United States and/or the states where I worked for  
4 HSBC. During the past three years, there were occasions when I worked over 40 hours per week  
for HSBC and did not receive overtime compensation.

5 I worked for HSBC as a (please check all that apply):

- 6  Retail Mortgage Lending Consultant  
 Senior Retail Mortgage Lending Consultant  
 Other Non-Management Mortgage Sales Employee

7 (Specify Title: \_\_\_\_\_)

8 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
correct.

9 Signature

MAY 3, 2007  
Date

10 PHILIP WONG  
Print Name

11  
12 REDACTED

13  
14 Fax or Mail To:

15 Paul Lukas  
16 Nichols Kaster & Anderson, PLLP  
17 4600 IDS Center, 80 S. 8<sup>th</sup> Street  
18 Minneapolis, MN 55402  
19 FAX (612) 215-6870

20  
21  
22  
23  
24 CONSENT AND DECLARATION

25 EXHIBIT

26 A

## **CONSENT FORM AND DECLARATION**

I hereby consent to join the lawsuit against HSBC as a Plaintiff to assert claims against it for violations of the wage and hour laws of the United States and/or the states where I worked for HSBC. During the past three years, there were occasions when I worked over 40 hours per week for HSBC and did not receive overtime compensation.

I worked for HSBC as a (please check all that apply):

- Retail Mortgage Lending Consultant
  - Senior Retail Mortgage Lending Consultant
  - Other Non-Management Mortgage Sales Employee

(Specify Title: \_\_\_\_\_)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

**Signature**

May 3<sup>rd</sup>, 2017  
Date

Print Name

**Print Name**

REDACTED

**Fax or Mail To:**

**Paul Lukas**  
**Nichols Kaster & Anderson, PLLP**  
**4600 IDS Center, 80 S. 8<sup>th</sup> Street**  
**Minneapolis, MN 55402**  
**FAX (612) 215-6870**

1                   **CONSENT FORM AND DECLARATION**

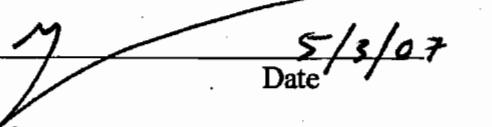
2                   I hereby consent to join the lawsuit against HSBC as a Plaintiff to assert claims against it  
3 for violations of the wage and hour laws of the United States and/or the states where I worked for  
4 HSBC. During the past three years, there were occasions when I worked over 40 hours per week  
for HSBC and did not receive overtime compensation.

5                   I worked for HSBC as a (please check all that apply):

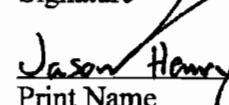
- 6                    Retail Mortgage Lending Consultant  
 Senior Retail Mortgage Lending Consultant  
 Other Non-Management Mortgage Sales Employee

7                   (Specify Title: \_\_\_\_\_)

8                   Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
correct.

9                   Signature      

10                  Date      5/3/07

11                  Print Name      

12                  REDACTED

13                  **Fax or Mail To:**

14                  Paul Lukas  
15                  Nichols Kaster & Anderson, PLLP  
16                  4600 IDS Center, 80 S. 8<sup>th</sup> Street  
17                  Minneapolis, MN 55402  
18                  FAX (612) 215-6870